

State of California
AIR RESOURCES BOARD

Notice of Public Availability of Modified Text

PUBLIC HEARING TO CONSIDER PROPOSED AMENDMENTS TO THE
AIRBORNE TOXIC CONTROL MEASURE FOR IN-USE DIESEL-FUELED
TRANSPORT REFRIGERATION UNITS (TRU) AND TRU GENERATOR SETS, AND
FACILITIES WHERE TRUs OPERATE

Public Hearing Date: October 21, 2011
Public Availability Date: February 28, 2012
Deadline for Public Comment: March 14, 2012

At its October 21, 2011, public hearing, the Air Resources Board (ARB or Board) considered proposed amendments to the Airborne Toxic Control Measure (ATCM) for In-Use Diesel-Fueled Transport Refrigeration Units (TRU) and TRU Generator Sets, and Facilities Where TRUs Operate (TRU ATCM), title 13, California Code of Regulations section 2477 and adopted new sections 2477.1, 2477.2, 2477.3, 2477.4, 2477.5, 2477.6, 2477.7, 2477.8, 2477.9, 2477.10, 2477.11, 2477.12, 2477.13, 2477.14, 2477.15, 2477.16, 2477.17, 2477.18, 2477.19, 2477.20, and 2477.21, which are designed to provide flexibility, improve enforceability, improve compliance rates, and clarify existing requirements. At the hearing, the Board adopted Resolution 11-35 that covered the amendment to section 2477 and the proposed adoption of sections 2477.1 to 2477.21, that were initially proposed by staff and described in the Notice of Public Hearing (45-Day Public Notice) and Staff Report, which were initially published on August 31, 2011. Modifications were suggested by staff in a document entitled "Staff's Suggested Modifications to the Original Proposal" that was distributed at the hearing and that was Attachment B to the Resolution.¹

In accordance with Government Code section 11346.8, the Board directed the Executive Officer to adopt the amendment to the California Code of Regulations, title 17, section 2477, and to adopt new sections 2477.1 to 2477.21, as proposed by staff, and to determine if additional modifications to the originally proposed amendment and adoption of sections 2477.1 to 2477.21 are appropriate, and if the Executive Officer does so determine, to make the modified regulatory language available for public comment for a period of 15 days before taking final action to adopt the amendments. The Board further provided that the Executive Officer shall consider such written comments as may be submitted during this period, shall make modifications as may be appropriate in light of the comments received, and shall present the regulations to the Board for further consideration if warranted.

¹ This document was inadvertently identified as Attachment D to Resolution 11-35 at the October 21, 2011 public hearing, but the text of this document clearly indicates that it presents staff's suggested modifications to the originally proposed amendments to the regulatory text set forth in Appendix A to the Staff Report: Initial Statement of Reasons (released August 31, 2011).

Resolution 11-35 further directed the Executive Officer to prepare and approve written responses to comments received, including comments raising significant environmental issues, as required by Government Code section 11346.9, Public Resource Code section 21080.5(d)(2)(D), and the California Code of Regulations, title 17, section 60007, to determine whether there are feasible alternatives or mitigation measures that could be implemented to reduce or eliminate any potential adverse environmental impacts, to make findings as required by Public Resources Code section 21081 if the proposed amendments would result in one or more significant adverse environmental impacts, and to take final action to adopt the proposed amendment to, and proposed adoption of California Code of Regulations, title 13, sections 2477 to 2477.21, as modified in the publicly noticed 15-day changes.

The regulatory documents for this rulemaking, including Resolution 11-35, are available online at the following ARB website:

<http://www.arb.ca.gov/regact/2011/tru2011/tru2011.htm>

This notice is an announcement of the opening of a 15-day comment period in which the public may provide comments on proposed modifications to the Transport Refrigeration Unit regulation.

Summary of Proposed Modifications

Attachment 1 to this notice contains the text of title 13, California Code of Regulations sections 2477, 2477.1, 2477.2, 2477.3, 2477.4, 2477.5, 2477.6, 2477.7, 2477.8, 2477.9, 2477.10, 2477.11, 2477.12, 2477.13, 2477.14, 2477.15, 2477.16, 2477.17, 2477.18, 2477.19, 2477.20, and 2477.21 that shows the proposed 15-day modifications to the originally proposed amendments to section 2477 and the proposed adoption of sections 2477.1 to 2477.21 of the TRU ATCM.

I. Modifications to Regulatory Text of title 13, California Code of Regulations (CCR) sections 2477 through 2477.21 Being Made Available for Comment

A. Requirements for Owners or Operators [13 CCR section 2477.5]

1. In section 2477.5(g)(3), subparagraph (C) was added to provide an additional means to submit an application to the Executive Officer electronically through ARB's ARBER website.
2. In section 2477.5(j)(1)(C), subparagraph 3. was added to provide an additional means to submit an application to the Executive Officer electronically through ARB's ARBER website.

3. In section 2477.5(k)(1)(A)6., subparagraph c. was added to provide an additional means to submit an application to the Executive Officer electronically through ARB's ARBER website.
4. In section 2477.5(k)(1)(A), subparagraph 7. was added to require TRUs and TRU gen sets to be registered in ARBER under section 2477.5(e) if the owner chooses to apply for a compliance extension because there is no suitable compliance technology available. Registration provides a way to track these units in ARBER while a compliance extension is in effect, and provides a mechanism for an inspector to check ARBER and determine that a citation for noncompliance should not be issued if an extension is in effect. In addition, registration provides for verification that compliance has been achieved after the extension has expired.
5. In section 2477.5(l)(1)(C)5., subparagraph c. was added to provide an additional means to submit an application to the Executive Officer electronically through ARB's ARBER website.
6. In section 2477.5(m)(1)(G), subparagraph 3. was added to provide an additional means to submit an application to the Executive Officer electronically through ARB's ARBER website.
7. In section 2477.5(n)(1)(E), subparagraph 3. was added to provide an additional means to submit an application to the Executive Officer electronically through ARB's ARBER website.

B. Requirements for TRU and TRU Gen Set Original Equipment Manufacturers [13 CCR section 2477.13]

1. Section 2477.13(a)(3) has been modified to require the original equipment manufacturer (OEM) to provide a written disclosure to be shipped with the TRU or TRU gen set if a TRU or TRU gen set is equipped with a flexibility engine. The modification also requires the OEM to instruct the dealer that sells the TRU or TRU gen set that they are required by California law to notify the ultimate purchaser of this disclosure prior to sale, and to pass the OEM-provided written disclosure to the ultimate purchaser at point of sale. The originally proposed amendment required the OEM to provide a written disclosure to the ultimate purchaser prior to sale of a TRU or TRU gen set that is equipped with a flexibility engine. An OEM provided comments during the 45-day public comment period that they do not sell TRUs and TRU gen sets directly to most ultimate purchasers and therefore do not have an opportunity to directly provide a written disclosure to most ultimate purchasers

prior to sale. Instead, the OEM's dealers sell TRUs and TRU gen sets to most ultimate purchasers and would therefore have direct contact with these ultimate purchasers and be able to provide the required notification. This modification therefore accommodates OEMs such as the commenter.

2. New sections 2477.13(c)(2)(D) and 2477.13(c)(3)(D) have been added, which allow TRU or TRU gen set OEMs to request Executive Officer approval of an alternative web-based, on-line look-up system to provide registration information to TRU and TRU gen set owners. The Executive Officer must find the alternative to be at least as effective as the originally proposed amendment, which required the OEM to provide a registration information document with each new TRU or TRU gen set. An OEM suggested this approach during the 45-day public comment period because its system is not compatible with the originally proposed amendment.

C. Requirements for TRU, TRU Gen Set, and TRU-Equipped Truck and Trailer Dealers [13 CCR section 2477.14]

1. Section 2477.14(a)(1) was modified to require dealers to provide a print-out of the registration information from the OEM's web-based look-up for a new TRU or TRU gen set if the OEM does not provide the registration information document with the new TRU or TRU gen set and instead obtains approval from the Executive Officer for the alternative under section 2477.13(c)(2)(D) to provide registration information through a web-based look-up.
2. Section 2477.14(a)(2) was modified to require dealers to provide a print-out of the registration information from the OEM's web-based look-up for a new replacement engine or rebuilt replacement engine if the OEM does not provide the registration information document with the new replacement engine or rebuilt replacement engine and instead obtains approval from the Executive Officer for the alternative under section 2477.13(c)(3)(D) to provide registration information through a web-based look-up.
3. New section 2477.14(a)(4) has been added to require TRU and TRU gen set dealers to notify the ultimate purchaser, prior to sale, of the OEM's disclosure that a new TRU or TRU gen set is equipped with a flexibility engine. The modification also requires dealers to pass the OEM's written disclosures, under section 2477.13(a)(3), that the TRU or TRU gen set is equipped with a flexibility engine, to the ultimate purchaser at point of sale. This requirement is related to and consistent with the modification

described in B.1., above, and therefore meets the Board's direction to propose additional conforming modifications for comment and adoption.

II. Other Minor Changes

ARB staff is also proposing the following minor changes.

A. Exemptions [13 CCR section 2477.3]

1. Subsection (d) included an incorrect reference to "subsection 2477.5(o)" and has been corrected to read "subsection 2477.5(j)."

B. Requirements for Owners or Operators [13 CCR section 2477.5]

1. In section 2477.5(a)(2), a double underline was added to the subparagraph outline heading "(A)" because the underline was omitted in the original version.
2. In section 2477.5(b)(3), a double underline was added to subparagraph outline headings "(A)" and "(B)" because the underline was omitted in the original version.
3. In section 2477.5(b)(4)(A), a double underline was added to subparagraph outline headings "1." and "2." because the underline was omitted in the original version.
4. In section 2477.5(b)(5)(B), a double underline was added to subparagraph outline heading "1." because the underline was omitted from the original version.
5. In section 2477.5(d)(3)(A), the subparagraph numbering was corrected by deleting the numerical outline headings "(1)" through "(6)" and replacing them with numerical outline headings "1." through "6." because the wrong outline hierarchy was used for this list.
6. In section 2477.5(d)(3)(B), the subparagraph numbering was corrected by deleting the numerical outline headings "(1)" through "(7)" and replacing them with numerical outline headings "1." through "7." because the wrong outline hierarchy was used for this list.
7. In section 2477.5(e)(1)(B), a double underline was added to the subparagraph outline heading "1." because the underline was

omitted from the original version.

8. In section 2477.5(g)(2), the second instance of subparagraph (E) was corrected to be subparagraph (F).
9. In section 2477.5(h)(1), “Owner/Operator” was capitalized (lowercase letters “o” was replaced with uppercase letters “O”) to be consistent with section title formatting requirements.
10. In section 2477.5(h)(1)(D), at the end of the last sentence, a comma and space were placed between “2477.5(e)” and “2477.5(f)”.
11. In section 2477.5 (j)(1)(G), the numbering of subparagraph 3. was corrected to be subparagraph 2.

C. Requirements for California-Based Shippers [13 CCR section 2477.10]

1. In section 2477.10(a), a duplicate “that” was deleted.

D. Requirements for California-Based Receivers [13 CCR section 2477.11]

1. In section 2477.11(a), a duplicate “that” was deleted.

E. Requirements for TRU and TRU Gen Set Original Equipment Manufacturers [13 CCR section 2477.13]

1. In section 2477.13(b)(1)(B), a double underline was added to the subparagraph outline heading “3.” because the underline was omitted from the original version.
2. In section 2477.13(b)(2)(C), subparagraph heading number “9.” was added because it had been incorrectly struck out in the earlier version.
3. In section 2477.13(d), change the word “disclose” to “disclosure.”

Submittal of Comments

Written comments will only be accepted on the modifications described in this notice and may be submitted by postal mail or electronic mail submittal as follows:

Postal mail: Clerk of the Board
Air Resources Board
1001 I Street
Sacramento, California 95814

Electronic submittal: <http://www.arb.ca.gov/lispub/comm/bclist.php>

Please note that under the California Public Records Act (Gov. Code § 6250 et seq.), your written and oral comments, attachments, and associated contact information (e.g., your address, phone, email, etc.) become part of the public record and can be released to the public upon request.

In order to be considered by the Executive Officer, comments must be directed to ARB in one of the two forms described above and received by ARB by 5:00 p.m., on the deadline date for public comment listed at the beginning of this notice. Only comments relating to the above-described modifications to the text of the regulations shall be considered by the Executive Officer.

If you need this document in an alternate format or another language, please contact the Clerk of the Board at (916) 322-5594 or by facsimile at (916) 322-3928 no later than five (5) business days from the release date of this notice. TTY/TDD/Speech to Speech users may dial 711 for the California Relay Service.

Si necesita este documento en un formato alternativo u otro idioma, por favor llame a la oficina del Secretario del Consejo de Recursos Atmosféricos al (916) 322-5594 o envíe un fax al (916) 322-3928 no menos de cinco (5) días laborales a partir de la fecha del lanzamiento de este aviso. Para el Servicio Telefónico de California para Personas con Problemas Auditivos, ó de teléfonos TDD pueden marcar al 711.

Attachment

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see ARB's website at www.arb.ca.gov.